



## COUNCILMEMBER CARL DEMaIO

FIFTH DISTRICT  
CITY OF SAN DIEGO

### MEMORANDUM

DATE: February 17, 2011

TO: Alex Ruiz, Water Department  
James Barwick, Real Estate Assets  
Kip Sturdevan, General Services

FROM: Councilmember Carl DeMaio

RE: Questions from Past Grand Jury Association Members

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In response to the recent Ad Hoc Audit Sub-Committee meeting, members of the Past Grand Jury Associations have asked a series of questions for city management about recommendations in three Grand Jury reports.

I respectfully request that answers to these questions be provided to the Ad Hoc Audit Subcommittee. In addition, I respectfully request that a representative from each of your Department's be available to give a presentation on this issue to the next meeting of the Ad Hoc Audit Subcommittee scheduled for March 7<sup>th</sup> at noon.

CC: Amy Benjamin, Office of the Mayor  
Matt Awbrey, Audit Committee Consultant

February 10, 2011

From: Audit Subcommittee on Grand Jury Implementation Review –  
Robert McNamara

To: Councilmember Carl De Maio

Matt Awbrey, Audit Committee Consultant

Subject: Follow-up on Implementation of Recommendations

Name of Grand Jury Report:

*Service Level Agreements Equal Backdoor Funding, April 25<sup>th</sup>, 2006*

**Summary:**

The above referenced report of the San Diego County Grand Jury was a study of Service Level Agreements between the two largest enterprise fund departments: Water and Metropolitan Wastewater (since consolidated into the Public Utilities Department) and several General Fund departments.

In general, the Grand Jury report found that the Water and the Metropolitan Wastewater Departments lacked policies and procedures to monitor the Service Level Agreements for performance, lacked supporting documentation to justify expenditure of rate payer funds, and lacked effective internal controls. Many of the payments made out of water and sewer revenue to General Fund Departments, under the Service Level Agreements, were found to be excessive or questionable. Inappropriate payments inflate the cost of service in water and sewer and these excess charges constitute a hidden tax on San Diego rate payers.

The Grand Jury Report contained twenty recommendations to remediate these deficiencies. The City responded that all the recommendations either had been or would be implemented. Copies of the report and the responses are attached.

**Questions:**

We have prepared the following questions for review by the subcommittee of the implementation of the Grand Jury's recommendations . All questions are for the Director of the Public Utilities Department or his appropriate designee, unless otherwise indicated.

1. Does the Public Utilities Department currently receive notification from the City Controller when costs authorized under a Service Level Agreement exceed the budgeted contract amount? (Rec. 06-18 & response)
2. What is the current status under which the concession stands at the City's seven reservoirs are operating?(Rec. 06-19 & response)
3. Does the Public Utilities Department currently have a Service Level Agreement with the Planning Department to participate in the General Plan updates? If yes, what performance metrics exist and how is your proportional cost determined?(Rec.06-22 & response)
4. Does the Public Utilities Department currently receive revenue for its rate payers for property under Qualcomm Stadium? If yes, how much revenue and under what terms?(3<sup>rd</sup> finding on Page 10)
5. What services are provided to the Public Utilities Department by the Real Estate Assets Department under Service Level

Agreements? How are billings monitored to prevent overcharges to your department?(Recs. 06-23, 06-24, 06-25, & responses)

6. Please give some examples of services provided to the Public Utilities Department by the Office of the City Attorney under a Service Level Agreement. How are the legal bills monitored for accuracy?(Recs. 06-26,06-27,06-28 & responses)
7. {Question # 7 may also be appropriate for the Director of Purchasing and Contracting} What is the process under which the Purchasing and Contracting Department formally reviews service levels, deliverables and payments for your department's Service Level Agreements?(Rec. 06-31 & response)
8. Do you believe that your department's payments under current Service Level Agreements reflect the true value of services received? What documentary evidence do you have to support your belief?
9. What problems, if any, is the Public Utilities Department currently experiencing with respect to Service Level agreements? How are you addressing them?
- 10.{For the City Auditor} In the process of auditing city departments, how do you ensure that funds transferred between non General Fund departments or agencies and General Fund departments are accurate and adequately documented?

February 10, 2011

From: Audit Subcommittee on Grand Jury Implementation Review –  
Art Daum

To: Councilmember Carl De Maio

Matt Awbrey, Audit Committee Consultant

Subject: Follow-up on Implementation of Recommendations

Name of Grand Jury Reports:

1. San Diego Street Conditions-Issue date, April 6<sup>th</sup>, 2006
2. City of San Diego Streets-Issue date, May 21<sup>st</sup>, 2007

**Summary:**

Members of the Past Grand Jurors Association reviewed the above referenced reports and compared them with the City Auditors report entitled Street Maintenance dated November 29<sup>th</sup>, 2010. Both the Grand Jury and the City Auditor agreed that policies and procedures for the coordination and the planning of street related projects are in need in improvement.

1. The City Auditor's report does not specifically address the Grand Jury's recommendation to develop a method to pursue the recovery of the costs of completing the work that was necessitated as a result of trenching streets by private companies or individuals. The City Auditor does, however, recommend that a process be developed for ensuring that private entities comply with the City's trench cut requirements.

2. The second Grand Jury report makes additional recommendations to pursue funding for the upgrade of all City streets to an acceptable condition and to maintain them at that acceptable level.

The Cities Auditor's report extensively documents funding requirements to achieve and maintain various levels of street maintenance and identifies sources of that funding.

Both the Grand Jury and the City Auditor agree that a comprehensive plan should be developed for the management of all transportation assets.

**Questions:**

We have prepared the following questions for review of the implementation of Grand Jury recommendations. All questions are for the Director of Transportation and Storm Water Department or his appropriate designee:

1. What is the status of a comprehensive plan for the short and long term management of the Cities transportation assets?
2. What procedures are currently in place to coordinate your department's work with the work of other departments involved in street maintenance?
3. What additional procedures still have to be developed to improve coordination among the other various City departments involved in street maintenance?
4. How are you addressing the issues involving the trenching of streets by outside entities; such as utility companies, construction companies, and private individuals?

# **SAN DIEGO CITY STREET CONDITIONS**

## ***SUMMARY***

The 2005-2006 San Diego County Grand Jury decided to examine the process and reimbursement issues regarding repairs when trenches are dug in the streets, and the distribution of costs for any repairs made by the City. In many parts of the City, trenches are capped with concrete without the proper top coating contrary to City Ordinances. Trenching of the streets in the City of San Diego is required for burial, modification and repair of underground utility lines. Entities needing to dig a trench in the streets must apply for a permit, unless the requirement for a permit is waived.

## ***PURPOSE***

Determine whether the City of San Diego is being reimbursed for the repairs to the streets made necessary because of improper trenching repair.

## ***PROCEDURES EMPLOYED***

### **Interviews:**

- Interviewed members of the San Diego City Engineering and Capital Projects Department.
- Interviewed members of the San Diego City Development Services Department.
- Interviewed members of the San Diego City Street Division.
- Interviewed members of the San Diego City Water Department.
- Interviewed members of the San Diego City Attorney's Office.
- Interviewed members of the San Diego City General Services Department.
- Interviewed members of the San Diego City Metropolitan Wastewater Department.

### **Observations:**

- Field observations noting the existing state of repairs of the streets in the City of San Diego.

### **Review of documents:**

- Reviewed City Ordinances pertaining to the repair of street surfaces after trenching was completed.
- Reviewed Franchise Agreements with private companies pertaining to the repair of street surfaces, after trenching was completed.
- Reviewed San Diego City Design manuals pertaining to the repair and resurfacing of street surfaces.

## ***DISCUSSION***

“The City Council finds that Excavations degrade and shorten the life of the Public Rights-of-Way. It is the purpose and intent of this Division to provide policies and procedures for Excavation in the Public Rights-of-Way in order to establish cost recovery mechanisms for all costs resulting from Public Utilities’ Excavations...”<sup>1</sup>

The decaying condition of the city streets is an obvious indication that the above statement by the San Diego City Council was, and is, true. It is apparent, to even the casual observer, that excavations made in the city streets are not properly repaired. Sinking trenches are leaving large depressions in the streets that go on for blocks causing even greater damage to the streets and to the vehicles passing over them. Trenches are capped with concrete and left that way, contrary to the established and enacted ordinances of the City of San Diego.

Why is this blatant disregard for the city ordinances permitted, and who is responsible? When the ordinances, policies and procedures, already in place, are followed, this deterioration of our streets should not exist, or at least be minimized, and mostly at no cost to the City.

There are several city departments and divisions responsible for overseeing the trenching of our city streets:

- **Engineering & Capital Projects Department:**

Primary responsibility for providing permits, inspection, and monitoring of warranty services for trenching in the public Right-of-Way.

- **Street Division:**

Responsible for alleys, bridges, curbs, gutters, dirt roads, potholes, sidewalks, and slurry sealing. Contractors perform most resurfacing of City streets, and City crews perform other repairs as necessary. The Street Division inspects and evaluates contractors’ work to assure it meets City codes and standards.

- **Development Services Department:**

Delegated authority from Engineering & Capital Projects to issue trenching permits for land development.

- **Metropolitan Wastewater Department:**

Accountable for the installation and repair of sewer and storm water pipes.

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<sup>1</sup> San Diego Municipal Code §62.1201



- **Water Department:**

Trenching for replacement of pipes and repair of existing pipes, and oversight of all new potable water pipes.

Each of these departments or divisions is responsible in some measure for the restoration of our streets after trenching in the public Right-of-Way has been authorized. However, primary responsibility lies with the Engineering & Capital Projects Department.

It is the responsibility of the Engineering & Capital Projects Department's Field Engineering to provide Construction Management Services which includes "...inspection (Quality Assurance/Quality Control) of work on City property or within the City's right of way. These projects are permitted work, subdivision work or Capital Improvement Projects."<sup>2</sup>

Contract compliance inspections are required to be made by Field Engineering. This includes making sure streets are in conformity with Standard Specifications for Public Works Construction and the Regional Standard Drawings, including appropriate supplements.<sup>3</sup>

The City of San Diego consists of approximately 2,800 miles of streets with paved surfaces.<sup>4</sup> Most paved streets are covered with asphalt, and a few with concrete.

During the course of this study it was disclosed that several entities are authorized to dig trenches in the streets for various reasons. This trenching is for the purpose of placing pipe or cable underground to utilize water, sewage, electricity, and communication delivery. All of the City departments, private companies, contractor or public utilities,<sup>5</sup> are expected to either cover the opening in accordance with existing regulations<sup>6</sup> or make arrangements for the trench to be filled with the proper materials.

Testimony received through interviews conducted by the Grand Jury confirmed that these inspections have not been conducted on a regular basis. The testimony revealed that primarily the repair of trenching in the public Right-of-Way is done only when a complaint is received from a citizen. At that time, an inspector from the Street Division inspects the trench, and if it is determined to be a traffic hazard, the party or department responsible is notified to correct the hazard. If the correction is not made in the specified time, the Street Division will make the repair.

At no time during the testimony received by the Grand Jury was it determined whether the City was reimbursed for making the repair, or if the matter of reimbursement was referred to the City Attorney for collection.

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<sup>2</sup> <http://www.sandiego.gov/engineering-cip/services/consultcontract/construction.shtml>

<sup>3</sup> <http://www.sandiego.gov/engineering-cip/about/field/ccinspections.shtml>

<sup>4</sup> City of San Diego Official website: <http://www.sandiego.gov/Street-Div/INFO.shtmls>

<sup>5</sup> Gas, Electric, Telephone, Fiber Optic, Traffic Signals, Street Lights and Television.

<sup>6</sup> San Diego Municipal Code, Article 2, Division 12.

Investigation made by this Grand Jury leads to one conclusion: The City's streets are an unacceptable patchwork of asphalt, concrete filled trenches and sinking asphalt laid over trenches. It is obvious and observable by any citizen of the City of San Diego driving on the streets or walking alongside of them.

The cost incurred to restore the street to its normal condition must be borne by the private entity as required by its franchise agreement or permit, or it is completed by a division of the city Public Works Department. In some cases, to ensure the private entity completes the work properly, a surety bond is placed with the City of San Diego in accordance with a contract drawn up by the City Attorney. If the completion of the work is not in accordance with contract specifications, the City Attorney should be notified by the responsible City department or division in order to start the process to reimburse the City for any actions the City takes to complete the project.

There are at least four different companies (San Diego Gas & Electric, SBC, Time Warner and Cox Cable) that have long term blanket franchise agreements with the City to commence and complete projects without permit, as is necessary to supply their customers with service. All private companies are expected to complete their individual projects in accordance with established rules and regulations related to the resurfacing of public streets within the City. Any deviances from these procedures are to be reviewed and approved or rejected by the City.

The City of San Diego has a number of streets within its jurisdiction that have been trenched and resurfaced. No procedures or policies are followed to make a regular inspection of most of the trenching taking place in the City unless there is a complaint made by a citizen and this includes inspection of work done on behalf of city departments such as water and sewer. When it receives a citizen complaint, the Street Division makes an assessment of the trench repair and contacts the appropriate entity to complete the repair, if needed.

However, if repair of the trench is not made by the entity responsible, and if it is found to be dangerous, then the Street Division will ultimately make the repair. The difficulty lies with the procedures of the Street Division in not having a system to follow through with seeking reimbursement from the responsible entity, thereby passing the cost of the repair on to the taxpayer. Further, other responsible departments do not inspect work performed on their behalf by contractors to correct deficiencies or refer the reimbursement of costs, when necessary to the City Attorney.

## ***FACTS AND FINDINGS***

The Grand Jury finds that:

**Fact:** The San Diego City Government has four different departments and their divisions are designated to handle various aspects of trenching and resurfacing City streets.

**Fact:** There are a variety of code requirements to be met by private companies and the City's own departments. These requirements are laid out in the published San Diego City Ordinances.

**Fact:** There is no procedure followed to notify the City Attorney to commence reimbursement proceedings.

**Finding:** This Grand Jury finds that there is inconsistent enforcement of policies and procedures in place to assure the repair of trenching. Non-compliance with these requirements by private companies and public utilities should trigger proceedings to forfeit their compliance bond, or reimbursement to the City. There is no procedure followed to notify the City Attorney to commence reimbursement proceedings.

**Fact:** Historically, the City has completed and/or corrected the individual projects when improper performance is encountered. However, testimony revealed these corrections only occur when brought to the attention of the City Departments in the form of a complaint by the public.

**Finding:** This Grand Jury finds that there is no enforced policy or procedure to assure compliance with Municipal Ordinances and Standard Drawings.

**Finding:** Inspection of work performed by private companies, contractors and City Departments is sporadic at best. Once inadequate performance is discovered, follow-up to ensure compliance or referral for compensation is rarely done.

## ***RECOMMENDATIONS***

**The San Diego County Grand Jury recommends that the Mayor of the City of San Diego:**

**06-14:** review the policies and procedures of the departments under the control of the City having jurisdiction over the care, maintenance and inspection of all City streets.

**06-15:** consult with the City Attorney to determine the best possible method to pursue the recovery of the cost of completing work done by the City and not presently reimbursed.

## ***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or

agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>ADDRESSEE WHO MUST RESPOND</u>	<u>RECOMMENDATIONS</u>	<u>DATE</u>
Mayor, City of San Diego	06-14, 06-15	7/5/06



# **SERVICE LEVEL AGREEMENTS EQUAL BACK DOOR FUNDING**

## ***SUMMARY***

Both the Water District (WD) and Metropolitan Waste Water District (MWWD) rely on other City of San Diego (City) departments to provide services. In 2004/05 the WD had 31 Service Level Agreement (SLA) contracts and the MWWD had 27 SLA contracts. An SLA is a contract by which one San Diego City (City) department obtains services or labor from another department. The two departments in 2004/05 funded 58 SLAs valued at \$66.4 million. MWWD has SLAs valued at \$45.8 million while the WD has \$20.6 million in SLA agreements. According to the city's 2004/05 budget there are 217 city positions paid through SLAs.

The 2005-2006 San Diego County Grand Jury could not find any San Diego City Council policy that governs the use of SLAs. Lacking are strong internal management checks and balances to ensure ratepayers are not paying for inappropriate services provided to the WD and MWWD through SLAs.

The Grand Jury finds that the SLA procedure has been used to divert WD and MWWD funds to subsidize city services that should have been funded by the General Fund.

Listed below are the SLA contracts the Grand Jury selected for study. In order to obtain accurate details the Grand Jury commissioned the San Diego County Office of Audits and Advisory Services to audit five WD and five MWWD SLAs. The full Audits are attached as Appendix A.

The remainder of this report addresses these issues in the following order:

- WD SLA with the Park and Recreation Department (P & R) for purchase of Chollas Reservoir water and services of a reservoir employee
- WD SLA with P & R to operate concessions at City of San Diego lake recreation areas
- WD and MWWD SLA with the Binational Affairs Coordinator
- WD and MWWD SLAs with the Planning Department
- WD and MWWD SLAs with the Real Estate Assets Department (READ)
- WD and MWWD SLAs with the City Attorney
- WD SLA with the City Library
- MWWD SLA with the Police Department

## ***PURPOSE***

The Grand Jury examined content, performance, and use of SLAs by the two largest enterprise departments, WD and MWWD. Several issues were examined based upon the following:

- Are SLAs legal under the city charter
- Are specific SLAs relevant to the mission of the enterprise fund department
- Do the SLAs benefit and/or enhance the total WD and MWWD system
- Are services provided as outlined in the agreement
- What monitoring procedures exist by management
- Are expenditures reasonable for the services provided
- Do SLAs subsidize programs and personnel that should be funded by the General Fund

## ***PROCEDURES***

- Review all available 2004 through 2006 SLA agreements of the WD and MWWD
- Interview San Diego City Manager
- Interview Deputy City Managers pertaining to WD and MWWD
- Interview WD Director
- Interview Metropolitan MWWD Director
- Interview Department Directors of the service provider
- Interview Director of P & R
- Interview Director of the Planning Department
- Interview Deputy City Attorney
- Interview Deputy Director of San Diego Public Library
- Interview Police Sergeant of the Air Support Unit
- Select 5 WD and 5 MWWD SLA contracts for in-depth review
- Authorize the County Office of Audits and Advisory to audit ten SLAs
- Review financial components of the agreements for consistency and validity
- Interview employees who actually performed the work as outlined in an SLA
- Conduct unannounced site visits in order to verify contract performance
- Inquire about internal management reviews or audits performed on SLAs
- Validate actual costs charged for each selected SLA
- Visit the San Diego Main Public Library basement
- Visit Chollas Reservoir and Miramar Lake

## ***DISCUSSION***

The City of San Diego's expenditures are funded by a variety of sources. The General Fund is supported, in part by local property and sales taxes, whereas, enterprise funds are supported by fees and assessments. An enterprise fund department has a specific revenue source outside the basic tax structure, usually paid by an assessment or ratepayer. The MWWD and the WD are enterprise funds with revenues derived from sewer and water billings.

The San Diego City Charter<sup>1</sup> states that WD and MWWD ratepayer fees (which constitute enterprise funds) can be used only to enhance, maintain, and improve the WD and MWWD systems. Artificially inflating water and sewer costs to cover expenses unrelated to the water and sewer distribution system constitutes a hidden tax on San Diego ratepayers.

Both the WD and MWWD rely on other departments for services. Purportedly, each city department director requests, drafts, executes and monitors the SLA contract agreement. The City has developed a standardized format which includes the following topics: service provider responsibility, customer responsibility, staff resources, performance goals and dispute resolution. The SLA format may vary based on unique circumstances.

SLA agreements and Memoranda of Understanding (MOU) were not a subject of City Council discussion until the City Manager gave a presentation to City Council in June, 2004. The SLA documents were treated as an internal city documents not readily available to the general public, although City Council members could request copies.

The June, 2004 City Council SLA presentation followed a televised report on the WD and MWWD's expenditures for SLAs with other City departments. The media story implied that the SLAs had minimal relevance with little or no benefit to the sewer or WD operations. It further implied that WD and MWWD funds were being used to pay for activities or programs that should otherwise be funded by General Fund sources.

### ***WD SLA for Purchase of Chollas Lake Water and an Employee Salary***

Chollas Reservoir was purchased in August 1912 by the WD. It was a key part of the water supply and distribution system from 1915-1952. After several years of dry conditions, and following passage in 1966 of a voter approved city bond, the reservoir was transferred from the WD to P & R.

In Fiscal Year (FY) 2005 it was decided that the WD should again be responsible for the Chollas reservoir, excluding the dam. The WD and P & R Department created an SLA authorizing a one time payment of \$600,000 to P & R to store water in the Chollas reservoir. Management was able to provide only informal documentation as support for making the decision to purchase these water rights. The Grand Jury audit revealed that management did not properly document, nor provide sufficient evidence to justify, this transaction. The decision also lacked a review by the Real Estate Assets Department (READ).

WD management could not produce evidence to justify a need for future water storage at Chollas. Neither P & R nor WD directors could clarify the reasoning for the October 2005 storage purchase agreement. There is no pumping facility to move water to any

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<sup>1</sup> City Charter, Article 7, Subdivision 2.



water treatment plant. The only existing piping is for fresh water pumped into the reservoir.

A second provision of the Chollas SLA provides for payment of the salary and benefits for one full-time Grounds Maintenance Worker II. The maintenance worker budgeted position was not to exceed \$50,674. The grounds maintenance worker was expected to perform a host of functions directed by, and reported to, the WD, including: water leakage, level readings, minor erosion control, vegetation control, and various inspections.

The lack of justification for this sale suggests that it was a transfer of WD enterprise funds to the General Fund. The audit conducted for the Grand Jury found that management did not properly document and provide evidence as to the city's actual need for future storage options that require such a transaction. That there is no basis for the \$600,000 valuation may suggest that this figure was arbitrary and capricious.

P & R Management knew of no budget allocation or spending plan for the \$600,000. He indicated that perhaps the funds could be directed towards deferred park maintenance, an item usually funded by the General Fund.

### ***FACTS AND FINDINGS***

**Fact:** Chollas reservoir has not been a part of the city's fresh water distribution system since 1952. Currently the reservoir is used for day time recreation and provides a pond for waterfowl.

**Finding:** The WD does not have any future plans to incorporate Chollas reservoir water into the fresh water or the reclaimed water systems.

**Fact:** The City Manager and Deputy City Manager initiated an SLA to purchase storage rights and arrived at a price without any significant documented methodology or input by the READ.

**Finding:** The use of an SLA for a land purchase did not provide a service to the WD. The sale and valuation of land comes under the purview of city's READ. No evidence was produced that the READ was consulted to substantiate the purchase price.

**Fact:** The SLA agreement authorized WD funding for one full time ground maintenance reservoir worker, not to exceed \$50,674. Quarterly and periodic reports concerning reservoir maintenance, water levels and inspections are required.

**Finding:** The Grand Jury audit revealed total payments for the worker of \$84,888 thus exceeding the authorized SLA amount by \$34,214. Managers at the WD and P & R were unaware of the overcharge. Further investigation found no evidence of maintenance reporting as stipulated between the WD and P & R.

## ***RECOMMENDATIONS***

**The Grand Jury recommends that the Mayor and San Diego City Council:**

- 06-16:**        **require management to clearly define the appraisal methods when establishing a purchase price for water storage.**
- 06-17:**        **require City Council oversight and approval for land or possessory rights purchases between city departments.**
- 06-18:**        **require the Auditor and Controller Department to notify management when an SLA exceeds the budgeted contract service price.**

### ***Park & Recreation Department Concessions at Lake Recreation Areas***

The WD has a five year agreement with the P & R to fund concession stands at the city's seven reservoirs. The seven concession stands sell bait, beverages, snacks, and rents boats. They provide park use-permits, process boat reservations and fishing licenses, enforce lake rules and assist the WD with unspecified lake maintenance. The five year SLA agreement began in 2003 and terminates in 2008. Twenty-four employee positions are paid from water funds. All expenses for labor and support equipment are paid by the WD.

Prior to the SLA, a private concessionaire operated the facilities. Poor sales and management issues caused the contractor to suddenly terminate the contract in the late spring of 2003. Faced with a demand to provide services for recreational users at city-owned reservoirs, the WD agreed to an SLA to fund recreational services at the lakes.

The Grand Jury reviewed documents which detailed the original start-up costs associated with the seven concession stands. This summary listed a start-up equipment allotment of \$911,439. The actual expense came in under budget at \$637,398 in FY 2003.

Beginning in 2005, the seven original concession stands were reduced to five due to lack of business. WD managers testified that the employees at the closed locations were reassigned to the P & R, and, that equipment from the closed facilities was either absorbed into the other concession stands or stored at the lakes.

Expenses associated with the operation of lake concessions exceeded revenues. Information provided to the Grand Jury revealed the concessions have not made a profit over the last three years. Water ratepayers have subsidized the operating losses in the amounts of \$899,914 in FY 2004, \$1,007,910 in FY 2005 and a projected loss of \$1,371,901 for FY 2006.

WD managers indicated they will evaluate the P & R SLA at the conclusion of the FY 2006 to determine whether to discontinue some of the services.

This is another example of the draining of enterprise funds to support activities more appropriately paid from the General Fund.

### ***FACTS AND FINDINGS***

**Fact:** According to the San Diego City Council Policy 400-03, general water rates can be used to offset all costs associated with basic level of access, community usage, and related grounds and facility maintenance.

**Fact:** The Grand Jury's investigation showed that the P & R employees of the closed concession stands continue to be funded by the WD.

**Finding:** Rate payers are subsidizing P & R functions which provide little or no benefit to the water system or water ratepayers.

### ***RECOMMENDATIONS***

**The Grand Jury recommends that the Mayor and San Diego City Council:**

**06-19: immediately reduce the multi-million dollar financial losses to the WD and P & R in the operation of concession stands by requiring the WD managers to monitor the financial operations of concession stands, demonstrate their benefits to the ratepayer, and validate their consistency with the San Diego City Charter.**

### ***Funding the Binational Affairs Coordinator***

This SLA calls for monitoring available funding sources for border water projects and for analyzing Mexican border water issues. The SLA requires reporting to WD and MWWD staff.

The Binational Affairs Coordinator, part of the Government Relations Department, has four funding sources. WD and MWWD are the primary funding sources with 50% from MWWD and 25% from WD. This funding is augmented by 15% from the Environmental Services Department and 10% from Transportation Department. Total annual cost for the Binational Affairs Coordinator is \$137,779.

The Binational Affairs Coordinator is to assist both WD and MWWD with US-Mexican Border issues. The coordinator focuses on enhancing the regions' economic climate and quality of life through the exchange of information services and technology.

The percentage of salary and position costs borne by the WWD and WD could not be validated based on the number of described water related projects. The Grand Jury audit revealed that of the thirty-one projects, only ten appeared to be relevant to either

enterprise department. Auditors discovered timesheets that do not designate or charge hours to a specific WD or MWWD project. The Coordinator's activities may benefit multiple city departments which do not contribute to the funding of the position. WD management testified that they do not actively monitor the product or the performance of this SLA.

## ***FACTS AND FINDINGS***

**Fact:** Neither the documents reviewed by the Grand Jury nor the Grand Jury audit revealed evidence that the WD and MWWD have benefited from this investment.

**Finding:** This funding is another example of the use of enterprise funds to subsidize a City department whose services has little relevance to the WD or MWWD.

## ***RECOMMENDATIONS***

**The Grand Jury recommends that the Mayor and San Diego City Council:**

- 06-20:** review WD and MWWD department funding for the Binational Affairs Coordinator and consider terminating the SLA agreement until a value to the departments can be demonstrated and the actual time spent on WD and MWWD projects can be validated.
- 06-21:** require that services, actual time spent, and product produced are documented and presented to WD and MWWD department management.

## ***WD and MWWD SLA Subsidizes the Planning Department***

In 2001 both the WD and MWWD funded SLAs with the Planning Department in support of the "General Plan".<sup>2</sup> Thus far, the agreement has cost the WD \$914,285 and the MWWD \$966,189. Cumulatively, the two departments have funded 20% of the General Plan update. The Agreements are parallel in scope and text. Each agreement calls for two senior planners. In 2004/05 the cost of a senior planner position and associated expenses was \$373,674 for WD and \$359,079 for MWWD. The difference is attributed to entry pay levels for senior planners. These agreements include charges for office expenses, computers, and telephone access which are referred to as department overhead.

The SLA states that the Planning Department services shall include analysis of MWWD and WD infrastructure needs in relationship to the City's General Plan, and assistance with community planning groups. Planning is to include WD and MWWD facility needs

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<sup>2</sup> City of San Diego Draft General Plan July 2005

in the update of the city's General Plan. Background information from the WD and MWWDs would be used to develop Power Point presentations for local planning groups.

The SLA supports four full-time senior-planner positions. Numerous individuals work part-time to fill these positions. The WD and MWWD are billed for the time spent, which can, according to management testimony, vary from ten to sixty percent of a full-time position.

The WD and MWWD utilities provide planners with technical data to assist the Planning Department in development of the General Plan update.

The Draft General Plan Update includes only seven pages of very general information relevant to WD and MWWD. It provides data such as miles of sewer pipe, the number of reservoirs and pump stations. This readily available information has changed little over the last five years.

Detailed information to support expenditures such as meeting dates, time spent with the utilities department, planning groups, and names of personnel working on the strategic framework were not available. Management testimony failed to yield any evidence that the utility departments benefited from their investment.

Neither the Planning Department nor the WD or MWWD could provide documents to validate their fair share of the cost, nor could they identify direct benefits to the WD and MWWD.

This SLA appears to be another example of the draining of enterprise funds to support activities more appropriately paid from the General Fund.

## ***FACTS AND FINDINGS***

**Fact:** WD and MWWD have funded approximately 20% of the General Plan Update.

**Finding:** The portion of cost paid by the WD and MWWD for the General Plan Update is disproportionate to benefits, although the cost is shared by several departments in the city.

**Fact:** WD and MWWD management could not identify any specific liaison person within the Planning Department. Employees that billed their time all appear to be senior planners. WD and MWWD management could not provide the names of specific water or wastewater employees who worked on the General Plan Update during the last five years.

**Fact:** The Grand Jury finds no evidence to support the significant investment of the utility departments into the General Plan Update.

**Finding:** The testimony provided by senior managers in WD and WWD suggests that they have little interest in this project and no expectation of any value to be received from their investment.

## ***RECOMMENDATIONS***

**The Grand Jury recommends that the Mayor and City Council:**

**06-22: review the WD and MWWD SLA agreements with the Planning Department and consider terminating the agreements until it can be demonstrated that the rate payers benefit from participation in the General Plan Update.**

### ***WD and MWWD SLAs with the Real Estates Assets Department (READ)***

Both the WD and MWWD have SLAs with READ, which is expected to provide a full range of real estate service to include: appraisal, acquisition, lease and sale of real property, as requested by the utility department. One hundred twenty properties are managed by READ of which MWWD has eight and WD has 112.

WD revenue from the properties in FY 2004 was \$2,784,195.74. The WD SLA supports 3.60 READ employees at a cost of \$457,531. The MWWD agreement calls for 2.05 employees, at a cost of \$225,391, to manage parcels which produced revenue of only \$101,847.

The SLA supports real estate staff positions to service these agreements. The WD and MWWD each employ a real estate manager who serves as their liaison to READ. The WD and MWWD were unable to identify the READ person designated as the liaison (required by the SLA) with WD and MWWD.

The Grand Jury learned that the WD owns a significant portion of the land under Qualcomm Stadium. The Grand Jury asked specific questions about whether the WD received revenue from this asset. These questions remain unanswered.

In another section of this Grand Jury Study is a discussion of the SLA between the WD and the P & R for the purchase of water in the Chollas Reservoir. The Grand Jury questioned managers from both WD and P & R in an attempt to determine whether the services of READ were used for the Chollas purchase. The Grand Jury was told by managers of the WD that READ services were not used. The Grand Jury was not successful in learning why the WD did not involve READ.

## ***FACTS AND FINDINGS***

**Fact:** The eight properties cost MWWD \$225,391 in management fees as compared to FY 2004 revenue of \$101,847.66. Previous years reflect a similar high ratio of expense to revenue.

**Finding:** The cost of the SLA to MWWD is excessive given the small number of properties under management. The Grand Jury was unable to verify the services and products provided by READ.

**Fact:** READ did not document meeting times, recent appraisals and services as required by the SLA.

**Finding:** This Grand Jury was unable to validate READ's assertion that it provides in-depth services to the WD and MWWD as required by the SLA.

**Fact:** The WD owns a significant part of the land under Qualcomm Stadium, but it appears that the WD gets no revenue from its property.

**Finding:** The WD ratepayers should receive revenue from WD property under Qualcomm Stadium.

**Fact:** The WD developed an SLA with P & R to purchase the Chollas Reservoir and pay for personnel at that location. It did not consult READ for assistance or an appraisal in spite of an existing SLA with READ for such services.

**Finding:** WD management's failure to involve READ in the purchase of Chollas Reservoir water suggests that READ may be paid in excess of the value of its services.

## ***RECOMMENDATIONS***

**The Grand Jury recommends that the Mayor and San Diego City Council:**

- 06-23:** review what appear to be excessive overhead and labor charges for property management services from READ.
- 06-24:** require READ's involvement in all WD and MWWD land transactions.
- 06-25:** require READ to document and justify all charges to the WD and MWWD, including actual time spent by various personnel at different billing levels, to protect against what appears to be excessive charges.

## ***WD and MWWD SLAs with the City Attorney***

Neither WD nor MWWD employs personnel with expertise or resources to provide legal counsel. In FY 2005, the WD funded 16.34 City Attorney positions for \$1,849,164 while MWWD funded 11.83 positions at a cost of \$1,391,082. The agreements specify what are termed “enhanced” legal services. Prior to this SLA there was no extra charge for City Attorney service, nor was a distinction made for “enhanced” services.

Highlights of the WD and MWWD SLAs with the City Attorney are listed below:

- Advisory and Transactions Legal Services advises on legal aspects of day to day business operations, personnel issues, and all legal issues and needs.
- Capital Improvement Program Legal Services draft and review financial bond documents, investigate property damage liability and draft memorandums of law.
- Construction Litigation Service provides all aspects of construction litigation for both departments include investigating, drafting, trying and settling cases and document management.
- The Code Enforcement Unit under the Criminal Department prosecutes water theft. Additionally, the City Attorney is to conduct classes in courtroom testimony, case preparation, and remedy.
- Civil Enforcement Units are to pursue debt collection, such as assessment district foreclosures and bankruptcy actions.

The City Attorney’s office employs a variety of attorneys to serve the WD and MWWD. They create full-time equivalency positions based on the time the individual attorneys spend on various projects. Time sheets document hours spent on MWWD or WD issues.

## ***FACTS AND FINDINGS***

**Fact:** Senior WD and MWWD managers could not identify what constituted the “enhanced” attorney services that were provided. For example, no manager could identify who in the attorney’s office prosecutes water theft, unpaid water bills or illegal MWWD dumping.

**Finding:** WD & WWD managers have no mechanism to monitor or evaluate legal services, or to demand accountability from the City Attorney.

## ***RECOMMENDATIONS***



**The Grand Jury recommends that the San Diego City Attorney:**

- 06-26:** identify the employees assigned to handle specific WD and MWWWD issues.
- 06-27:** clarify what legal services are provided by the General Fund and what constitutes "enhanced legal services".
- 06-28:** provide detailed billings to WD & MWWWD which identify the name(s) of personnel providing a service and identify specific charges for a specific service or time.

### ***WD SLA with the Library Department***

The WD entered into an SLA agreement with the San Diego City Library Department (Library) to preserve, inventory and categorize over 90,000 WD documents found at an old water treatment plant. The documents, which represent nearly 100 years of San Diego water history, include historic vintage photographs, an old San Diego phone book directory, a Director's appointment calendar and architectural drawings.

Since the WD lacked the expertise and equipment to categorize, preserve, and scan such a large quantity of documents they elected to authorize an SLA with the Library. Interviews with senior WD managers revealed that they had no specific knowledge of this SLA project.

At this time the WD has no plans for storage or display of the historic materials. Management expressed a desire to display various documents and photographs at public libraries and/or the San Diego Historical Society.

This project is an appropriate use of WD funds. The preservation of these documents is a worthy task, and the billings are reasonable for each party. The Grand Jury was unable to find evidence that the WD has any plan for preservation or use of the records after they are catalogued.

The technician working on the preservation and cataloguing efforts cautioned that the documents will require environmentally appropriate storage once the work is turned over to WD.

### ***FACTS AND FINDINGS***

**Fact:** This SLA is in its second year of execution in FY 2006. The SLA amount of \$57,878 includes charges for employee wages and overhead.

**Finding:** During an unannounced visit to the main Library the Grand Jury found the library technician was working precisely on the work outlined in the SLA. The equipment in use had a WD property identification label. This is consistent with the SLA.

## ***COMMENDATION***

The Grand Jury commends the Library for its performance in executing the preservation and cataloguing of historical records on behalf of the WD. These pictures and documents are an important part of San Diego history and deserve preservation. The Library billing records are accurate and auditable.

## ***RECOMMENDATIONS***

**The Grand Jury recommends that the Mayor and City Council:**

**06-29:        ensure that WD devises and implements an action plan to store, maintain and/or display historic WD documents when the SLA is completed.**

### ***MWWD SLA for San Diego Police Department Helicopter Surveillance***

MWWD initiated an SLA to use the Police Helicopter for airborne video photography and thermal imaging of sewer manhole covers. Flights are scheduled following what the SLA terms "a Significant Rainfall Event" (SRE). An SRE is defined as one-half inch of rain or greater. Aerial reconnaissance replaces ground-based physical inspections of twelve specific canyon regions.

In previous years MWWD personnel could request Police Department air support provided that it did not impact a policing mission. This was done on an informal basis. Eventually the requests did impact police operations and budget. The Police Department suggested a more formal agreement to include personnel and helicopter expenses. In 2004/05 the first agreement was executed between the departments and eleven flights took place.

Video taping and thermal imaging were offered, but not used by the MWWD since visual inspection appeared sufficient. Manhole covers were painted bright orange and could be easily spotted from the helicopter. Flights typically occur during the morning daylight hours.

Documentation of flight length and personnel involved provides auditable billings. The entire program budget is driven by the amount of rainfall in a calendar year and thus may vary from year to year. The 2004/05 SLA budget was \$65,000 while the actual billing to the MWWD was \$6,488.26.

The Grand Jury considers this an excellent use of an SLA to obtain specific enhanced services at a reasonable cost.

### ***FACTS AND FINDINGS***

**Fact:** Use of helicopter flights avoided the time consuming task of ground inspections of remote manhole covers in remote canyons.

**Finding:** According to management testimony, the flights saved the MWWD labor, time, and equipment.

### ***COMMENDATION***

**San Diego Police Department:** The Grand Jury commends the Police Department for its performance and management of the SLA with the MWWD. It delivered helicopter surveillance as requested, maintained accurate records of its time and billed accordingly.

### ***RECOMMENDATIONS***

**The Grand Jury recommends that the Mayor and San Diego City Council:**

**06-30:**           continue the use of this SLA between MWWD and the Police Department.

### ***RECOMMENDATIONS NOT SPECIFIC TO AN SLA DISCUSSED IN THIS REPORT***

After reviewing many SLAs, interviewing managers from the WD and MWWD, and reviewing the findings of The Grand Jury Audit, The Grand Jury has concluded that the managers of the WD and MWWD enterprise funds have allowed expenditures for SLAs with little or no respect for the agency charter or ratepayers. The absence of an internal and/or independent audit management team has prevented close examination of the inappropriate use of SLAs.

**The Grand Jury recommends that the Mayor and San Diego City Council:**

**06-31:**           initiate a city management-oversight group, separate from the WD and MWWD, to prevent abuse of enterprise fund resources. It would enact and enforce policies and procedures governing all uses of SLAs.

- 06-32: require that each SLA include quantifiable performance methodology and written evaluation to validate the suitability, effectiveness, and efficiency of services provided.
- 06-33: establish an independent management audit group to review the use of SLAs by WD and MWWD. This body should have the authority to recommend immediate changes to, or cancellation of, an SLA upon discovery of Charter violations. It could verify that labor and overhead charges are relevant and reasonable.
- 06-34: verify that costs for overhead and labor are commensurate to the value of the services received, and are consistent among all SLAs.
- 06-35: require that equipment purchased with SLA funds be retained or disposed of by the department that paid for it.

### ***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or

study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.

- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>ADDRESSEE WHO MUST RESPOND</u>	<u>RECOMMENDATIONS</u>	<u>DATE</u>
Mayor, City of San Diego	06-16 through 06-25, 06-29 through 06-35	7/24/06
City Council, City of San Diego	06-16 through 06-25, 06-29 through 06-35	7/24/06
City Attorney, City of San Diego	06-26, 06-27, 06-28	7/24/06